

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 14-23, 25-29, 33-34 and 36-39 are pending in the application, with claims 23 and 29 being the independent claims. Claims 1-13 and 24 were previously cancelled. Claims 30-32 and 35 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Examiner Interview

Applicants thank the Examiner for the courteous and helpful telephonic interview conducted with Applicants' representatives on June 15, 2004.

Rejections under 35 U.S.C. § 112, First Paragraph

Written description

The Examiner maintained the rejection of claims 14-23 and newly rejected claims 25-39 under 35 U.S.C. § 112, first paragraph, for lack of written description. (Paper No. 0304 at 2.) The Examiner is of the opinion that "the claimed genus of promoter sequences is not adequately described" and "Applicants have not described a representative number of species falling within the scope of the claimed genus, nor the

structural features unique to the genus." (Paper No. 0304, at 3-4.) Applicants respectfully traverse this rejection.

Applicants disagree that the specification fails to adequately describe the claimed genus of promoter sequences or structural features unique to the genus. Without acquiescing in the propriety of the rejection and solely in an effort to expedite prosecution, however, Applicants have amended claims 23 and 29 to refer to a nucleic acid molecule having SEQ ID NO:1 (part (i)). The limitation of cancelled claim 4 was previously incorporated into claims 23 and 29, part (i). As claim 4 was not previously rejected for lack of written description, this embodiment of claims 23 and 29 is allowable. In addition, during the Examiner interview, the Examiner indicated that promoter sequences having the sequence set forth in SEQ ID NO:1 would be allowable. The remaining claims dependent either directly or indirectly from claims 23 and 29. Therefore, the rejection of claims 14-23, 25-29, 33-34 and 36-39 for lack of written description is overcome and should be withdrawn.

Rejections under 35 U.S.C. § 112, First Paragraph

Enablement

The Examiner maintained the rejection of claims 14-23 and newly rejected claims 25-39 under 35 U.S.C. § 112, first paragraph, for lack of enablement. (Paper No. 0304 at 4.) Applicants respectfully traverse this rejection.

As indicated above, Applicants have amended independent claims 23 and 29 to refer to a nucleic acid molecule having SEQ ID NO:1 (part (i)). The Examiner indicated in the Office Action and during the Examiner interview that the specification is enabling

for a salicylic acid and BTH inducible AoPRT-L promoter of SEQ ID NO:1 obtained from *Asparagus officinalis*. (See Paper No. 0304 at 4.) Therefore, the rejection of claims 14-23, 25-29, 33-34 and 36-39 for lack of enablement is overcome and should be withdrawn.

Rejections under 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claims 31, 32, 35 and 39 under 35 U.S.C. § 112, second paragraph, as being indefinite. (Paper No. 0304 at 7.) Applicants have cancelled claims 31, 32 and 35, and amended claim 39 to correct the improper dependency. Claim 39 now depends from claims 36 or 37 rather than cancelled claims 9 or 10. Thus, the rejection of these claims is moot.

Other Matters

Applicants acknowledge the Examiner's indication that claims 14-23 and 25-39 are free of the prior art.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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